S.B.CIVIL WRIT PETITION NO.1541/2003

Bhanwara Ram Choudhary
v.
Ajmer Vidhyut Vitran Nigam Ltd. & Ors.

Date of Order :: 15th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Anand Purohit, for the petitioner.
Mr. Sumeet Mehta, for the respondents.

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By this petition for writ the petitioner, who is holding the post of Junior Engineer Gr.II with the respondents, has claimed for selection grades w.e.f. 1.4.1989 for that he is entitled as per Rajasthan State Electricity Board's Circular dated 20.9.1989. According to the circular referred above an employee on completion of seven years satisfactory performance of service is entitled for selection grade. The petitioner though appointed on 27.2.1977 with Rajasthan Sate Electricity Board as Junior Engineer but the selection grade was not accorded to him by the respondents. It is stated in the petition that under an order dated 17.11.1989 certain persons junior to the petitioner were given selection grades and the petitioner by various representations made request for the same but of no consequence.

In reply to the writ petition it is submitted by the respondents that there were certain inquiries against the petitioner and, therefore, on assessment

his service performance was not found satisfactory and, therefore, the benefit of grant of selection grade was not extended to him. The respondents alongwith reply placed on record a communication dated 23.1.2004 wherein reference of certain penalties is given those are faced by the petitioner. A memorandum dated 16.9.1997 and 24.7.2002 are also placed on record as Anx.R/2 and Anx.R/3 respectively whereby disciplinary proceedings were initiated against the petitioner for the allegation of misconduct.

In rejoinder to the reply the petitioner denied the facts about initiation of disciplinary proceedings and the penalties imposed upon him as averred in reply to the writ petition. It is specifically stated in para 2 of the rejoinder that the penalties referred in document Anx.R/1 are not concerned to him and the documents Anx.R/2 and Anx.R/3 pertain to the year 1997 and 2002 whereas performance of the petitioner was required to be assessed in the year 1989 i.e. from the date selection grades were allowed to his juniors.

This Court in view of the fact that the petitioner denied the imposition of penalties as referred in document Anx.R/1 directed the respondents to satisfy the Court as to whether particulars of the inquiries given in reply to the writ petition specially in Anx.R/1 relates to the petitioner. In

pursuant thereto an additional affidavit has been filed sworn in by Shri B.S.Chouhan, officer-in-charge of the case stating therein that the record pertaining to the inquiries referred in document Anx.R/1 is not available being weeded out.

Heard counsel for the parties.

The petitioner was denied selection grades by the respondents on the count that his performance was not found satisfactory in view of the penalties imposed upon him as referred in communication dated 23.1.2004 (Anx.R/1). The petitioner in his rejoinder in quite unambiguous terms stated that the facts averred in document Anx.R/1 are not related to him and he never faced such penalties. It is pertinent to note that performance of service of the petitioner was required to be assessed in the year 1989 when selection grades were given to other persons and the document Anx.R/1 is dated 23.1.2004. The respondents despite opportunity given by this Court failed to produce any document or even to make a specific statement that it was the petitioner who faced the penalties referred in communication dated 23.1.2004. During the course of hearing of the case also counsel for the petitioner frankly stated that no document is available with the respondents to substantiate the facts averred in communication Anx.R/1. The respondents also failed to satisfy about foundation

for the averments contained in document Anx.R/1. In view of it this Court is left with no option but to accept the contention of the petitioner that the penalties referred in document Anx.R/1 do not relate to him. The disciplinary proceedings initiated against the petitioner under the memorandum Anx.R/2 dated 16.9.1997 and Anx.R/3 dated 24.7.2002 are quite subsequent to the date on which service performance of the petitioner was to be assessed for grant of selection grades and, therefore, that cannot be a reason for denial of selection grades to the petitioner. In view of the factual position as discussed above I am is of the considered opinion that there was no material available with the respondents to say that service performance of the petitioner was not satisfactory as required for grant of selection grade.

Accordingly, this petition for writ is allowed. The respondents are directed to grant selection grade to the petitioner from the date it was accorded to the persons junior to him. The respondents shall also pay interest on the arrears accrued to the petitioner in view of the directions above @ 4.5% per annum.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.